

Appln. No. 09/648,132
Amendment dated April 28, 2004
Reply to Office Action mailed January 28, 2004

REMARKS

Reconsideration is respectfully requested.

Entry of the above amendments is courteously requested in order to place all claims in this application in allowable condition and/or to place the non-allowed claims in better condition for consideration on appeal.

Claims 3 through 8 and 15 remain in this application. Claims 1, 2, and 9 through 14 have been cancelled. No claims have been withdrawn or added.

Parts 1 and 2 of the Office Action

Claims 1 through 3 and 12 through 14 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Breed (GB 2301922) in view of Harris Jr. (4,687,305).

Claims 4 through 11 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Breed (GB 2301922) and Harris Jr. (4,687,305) in view of Bauer (5,808,778).

Claims 1, 2, and 9 through 14 have been cancelled.

Claims 3 and 6 have been written into independent form with all limitations from the claims from which each of these claims previously depended, and with no further limitations added. Thus, the scope of claims 3 and 6 and the claims that depend from them has not changed.

Claims 3 and 6 each require, in part, "a monitoring device coupled to an interior surface of said rear portion of said vehicle, said monitoring device directing information to said reflective surface" and "said monitoring device being a monitoring mirror".

Appln. No. 09/648,132

Amendment dated April 28, 2004

Reply to Office Action mailed January 28, 2004

The rejections in the Office Action rely upon the alleged obviousness of the combination of the Breed and Harris, or more particularly, that one of ordinary skill in the art, considering the disclosure of Breed, would modify the "optical interior vehicle monitoring sensor" (particularly the one referenced by number "211") by changing it to the mirror 20 shown in the Harris patent. However, it is submitted that this allegedly obvious modification of the "optical interior vehicle monitoring sensor" 211 of Breed would not be obvious to one of ordinary skill in the art, as any such modification would render the Breed system incapable of performing its primary function.

In particular, the Breed document teaches a number of functions for the "optical interior vehicle monitoring sensor" 211, which are outlined in part on page 27, lines 11 through 16 of the Breed document and are described in more general terms at page 5, lines 8 through 21 as part of their function in "pattern recognition". Many, if not all, of the described functions of the "optical interior vehicle monitoring sensor" element in Breed requires that a signal be sent to a computer or other processing device in order to determine the presence of an occupant in a particular position so that an airbag or other restraint may or may not be triggered in the event of a collision. The primary purpose of the system described in the Breed document is to determine the need for inflating an airbag due to the presence of absence of a human in a particular position at the time of impact.

However, replacing even one of the "optical interior vehicle monitoring sensors" of the Breed system with an optical mirror greatly compromises the ability of the Breed system to perform this primary function, as a mirror as shown in Harris is unable and incapable of generating any signal that can be received by a processor and processed in order to determine whether a person is occupying an area of the vehicle and

Appln. No. 09/648,132

Amendment dated April 28, 2004

Reply to Office Action mailed January 28, 2004

whether an airbag should be deployed in the event of a collision. Thus, it is submitted that the proposed modification of Breed with the Harris mirror would render the Breed system incapable of performing its primary function. It is also submitted that one of ordinary skill in the art, considering the Breed document and its teaching, would not find it obvious to make a modification that would render Breed unable to perform its primary purpose.

According to a well established tenet of patent law, a teaching cannot be modified in a manner unsatisfactory to its intended purpose. This tenet of patent law, promulgated by the Federal Circuit, is stated in MPEP 2143.1 as follows:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

It is thus submitted that the Harris patent does not suggest to one of ordinary skill in the art to modify the Breed system to include a mirror, which would render the Breed system unsatisfactory for its intended purpose as outlined in the Breed patent application.

It is therefore submitted that the cited references, and especially the allegedly obvious combination of Breed, Harris, and Bauser set forth in the rejection of the Office Action, would not lead one skilled in the art to the applicant's invention as required by claims 3 and 6. Further, claims 4 through 5, and 7 through 8, which depend from claims 3 and 6 (respectively), also include the requirements discussed above and therefore are also submitted to be in condition for allowance.

Withdrawal of the §103(a) rejections of claims 3 through 8 is therefore respectfully requested.

Appln. No. 09/648,132

Amendment dated April 28, 2004

Reply to Office Action mailed January 28, 2004

Part 3 of the Office Action

Claim 15 has been allowed.

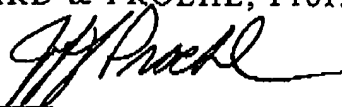
CONCLUSION

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

LEONARD & PROEHL, Prof. L.L.C.

By



Date:

4/28/04

Jeffrey A. Proehl (Reg. No. 35,987)
LEONARD & PROEHL, Prof. L.L.C.
3500 South First Avenue Circle, Suite 250
Sioux Falls, SD 57105-5807
(605)339-2028 FAX (605)336-1931